



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

HAYKAL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

UNFPA

Introduction

1. By an incomplete application filed on 24 June 2021, completed on the same day at the request of the Tribunal, the Applicant, a Communications Consultant with the United Nations Population Fund (“UNFPA”) based in Beirut, requests suspension of action, pending management evaluation, of the decision not to select her for the position of Media and Communications Officer at UNFPA and the resulting “termination” of her consultancy.

Consideration

Receivability ratione personae

2. The Tribunal first has to determine the status of the Applicant and consider whether her application is receivable, *ratione personae*, pursuant to arts. 2.1 and 3.1 of its Statute.

3. Art. 2.1 of the Tribunal’s Statute relevantly reads:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations.

4. Art. 3.1 of the Dispute Tribunal’s Statute stipulates that an application under art. 2.1 of said Statute may be filed by (emphasis added):

(a) Any **staff member** of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any **former staff member** of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased **staff member** of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

5. In *Basenko* UNDT/2010/145, the Dispute Tribunal addressed the issue of the limitation of its jurisdiction in the following terms:

In Judgments UNDT/2010/098, *Gabaldon*, and UNDT/2010/142, *Roberts*, the Tribunal held that the limitation of its jurisdiction to persons having acquired the status of staff member was the clear wish of the General Assembly. Indeed, the General Assembly, which had considered proposals to open the Tribunal to non-staff personnel, such as Interns and Type II gratis personnel (e.g., A/62/748, referred to in A/RES/63/253), opted to reject such proposals and to limit the scope of the Tribunal's statute as reflected in article 3.1. Hence, this limitation does not constitute an unintended lacuna and there is no room for a larger interpretation of the actual wording of the statute. The limitation of the scope of the Tribunal's jurisdiction has been confirmed by the United Nations Appeals Tribunal in its Judgment 2010-UNAT-008, *Onana*.

6. The status of a staff member is a necessary condition for access to the Tribunal and this interpretation has been upheld by the Appeals Tribunal notably in *Basenko* 2011-UNAT-139.

7. The Tribunal notes that, as per the information on record, the Applicant's employment status at the time of the contested decision was that of a Consultant. Consequently, she has no standing before this Tribunal and her application for suspension of action cannot but be dismissed on the ground that it is not receivable *ratione personae* pursuant to art. 3.1 of the Tribunal's Statute.

Receivability ratione materiae

8. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage.

9. Pursuant to this provision, this Tribunal has consistently held that for an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions (see for instance *Kooshak* Order No. 80 (GVA/2020)):

- a. The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;
- b. The contested decision has not yet been implemented;
- c. The application concerns an administrative decision that may properly be suspended by the Tribunal;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. Its implementation would cause irreparable damage; and
- f. The case is of particular urgency.

10. Upon completing her application for suspension of action, the Applicant submitted a copy of her 15 June 2021 request for management evaluation, which she addressed to the Management Evaluation Unit (“MEU”), Office of the Under-Secretary-General for Management Strategy, Policy and Compliance, United Nations Secretariat.

11. However, the employing entity concerned by the decision that the Applicant wishes to suspend is UNFPA, which has its own MEU. The United Nations Secretariat’s MEU is not competent to examine the Applicant’s request for management evaluation, which should have been addressed to UNFPA’s MEU. This is confirmed by the 16 June 2021 letter to the Applicant from the United Nations Secretariat’s MEU that the former annexed to her application for suspension of action.

12. It follows that the Applicant has not requested management evaluation of the contested decision, which is one of the mandatory conditions to be met for this Tribunal to consider applications for suspension of action. Consequently, the Tribunal further finds that the instant application for suspension of action is not receivable *ratione materiae*.

Conclusion

13. In view of the foregoing, the application for suspension of action is dismissed.

(Signed)

Judge Teresa Bravo

Dated this 29th day of June 2021

Entered in the Register on this 29th day of June 2021

(Signed)

René M. Vargas M., Registrar, Geneva